IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

MONDAY, THE 4TH DECEMBER 2006 / 13TH AGRAHAYANA 1928

WP(C).No. 18558 of 2006(H)

PETITIONER:

JAYASREE T.,
(FORMER H.S.S.T. OF Z.H.S. SCHOOL, TALI.)
"SREYAS", MANKAVE PALACE, MANKAVE P.O.,
CALICUT-7.

BY ADV. SRI.M.V.BOSE
SRI.K.D.BABU
SRI.VINOD MADHAVAN
SMT.NISHA BOSE

RESPONDENTS:
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1. THE DIRECTOR OF HIGHER SECONDARY EDUCATION, HOUSING BOARD BUILDINGS, SANTHI NAGAR, THIRUVANANTHAPURAM-1.

2. THE EDUCATIONAL AGENCY (MANAGER), ZAMORIN'S HIGHER SECONDARY SCHOOL, TALI, KOZHIKODE.

3. P.C.RANJITH RAJA, PUTHAN MALIKA, MANKAVE P.O

BY ADV. SRI.O.V.RADHAKRISHNAN (SR.)
SMT.K.RADHAMANI AMMA
SRI.ANTONY MUKKATH
SRI.M.P.SREEKRISHNAN
SMT.SHAHNA KARTHIKEYAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07/08/2006, THE COURT ON 04/12/2006 DELIVERED THE FOLLOWING:

A.K.BASHEER, J.

W.P.(C) NO. 18558 OF 2006

Dated this the 4th day of December, 2006

J U D G M E N T

Is a Higher Secondary School teacher who has worked in short term vacancies, eligible to claim preference for appointment to future vacancies in the school as envisaged under Rule 51(A) of Chapter XIV-A of the Kerala Education Rules?

2. The above question has cropped up for consideration in this writ petition in the following facts and circumstances.

3. The petitioner is a post graduate in Sociology with 50% marks. She has obtained Bachelor's Degree in Education (B.Ed.)also. She was appointed as a part time Higher Secondary School teacher in Sociology in Zamorin's Higher Secondary School, Kozhikode under the management of respondent No.2 in a leave vacancy for the period from October 25,2000 to March 31,2001. It is the admitted position that petitioner was again appointed in yet another short term leave vacancy. True photocopies of the orders of appointment are on record as Exhibits P3 and P4. It is beyond controversy that the two spells of appointment mentioned above were approved by the competent authority.

4. It is not in dispute that there arose a vacancy of Higher Secondary School teacher in the school in January 2006. According to the petitioner she had staked a claim for appointment to the above post by virtue of two earlier spells of service in the school. It is contended by the petitioner that she is entitled to get preference for appointment under Rule 51(A) of Chapter XIV(A) of Kerala Education Rules. Laying heavy emphasis on Exhibit P6 circular issued by respondent No.1, the Director of Higher Secondary Education, it is contended that the management is not entitled to ignore or overlook the preferential claim available to the petitioner under Rule 51(A).

5. Per contra, it is contended by the management that method of appointment and qualifications of teaching and non teaching staff in aided higher secondary schools have been prescribed and codified in Chapter XXXII of Kerala Education Rules. The management is bound to follow the procedure prescribed in the said Chapter. Rules in Chapter XXXII do not prescribe or postulate any preferential right in favour of a Higher Secondary School Teacher even if he/she has worked in the school in a short term vacancy. In other words, the contention is that the provisions contained in Rule 51(A) in Chapter XIV(A) are not applicable in the matter of

appointments in a Higher Secondary School. The case of the management is that petitioner is not entitled to get any preferential right for appointment as a Higher Secondary School Teacher in the absence of any Rule in Chapter 32 which is akin to Rule 51(A) of Chapter XIV(A). Chapter XXXII is a self contained code of rules prescribing the method of appointment and qualifications of teaching and non-teaching staff in Higher Secondary Schools. The rules do not envisage any preferential right to a teacher who might have worked in a short term vacancy. The management had appointed respondent No.3 by transfer from among the qualified High School Assistants working under the Education Agency as provided under Chapter XXXII .

6. In this context, it is necessary to refer to Rule 51(A) of Chapter XIV(A) which reads thus.

> "Rule 51(A): Qualified teachers who are relieved as per Rule 49 or 52 or on account of termination of vacancies shall have preference for appointment to future vacancies in schools under the same Educational Agency (or an Educational agency to which the school may be subsequently transferred) provided they have not been appointed in permanent vacancies in schools

under any other Educational Agency)".

A perusal of the above rule undoubtedly shows that the right of a qualified teacher who had been relieved on account of termination of vacancy to get preference for appointment to future vacancies in the school under the same educational agency has been protected. The contingencies under which the above protection would be available have been delineated in the rule. It is pertinent to note that Rule 51-A under Chapter XIV-A K.E.R. which deals with conditions of service of aided school teachers, refers to teachers who had been relieved either under Rule 49 or 52 or on account of termination of vacancies. It is yet again true that at the time when Rule 51(A) was incorporated in the statute book, a separate code of rules for appointment of teachers in the Higher Secondary Schools was not under the contemplation of the rule making authority. Plus two (Higher Secondary) classes were sanctioned in schools after delinking of Pre-degree from the colleges in the State in the year 1997. Chapter XXXII was incorporated in Kerala Education Rules only w.e.f. November 12, 2001. There was confusion for quite sometime in the matter of recruitment/appointment of teachers in the Higher Secondary sections of the schools. The Government had notified the rules in Chapter XXXII pursuant to a direction issued by the Lordship of Supreme Court in **M.M.Dolichan vs. State of Kerala (2001(1) SCC 151**.

During the interregnum, the Government had issued several orders and circulars to meet the contingencies in the matter of appointment of teachers and Principals also in relation to their service conditions. It is not necessary to refer to those orders or circulars at this stage, since the issue involved in this case falls in a narrow compass. Reference has been made to the above aspect only to stress the fact that orders and circulars issued by the Government or the Department as the case may be, had governed the field of appointment of teachers in the Higher Secondary schools in the State till special rules were framed. It is the settled position of law that the Government would be empowered to issue executive orders governing service conditions of the employees in the absence of any statutory provision governing the field.

7. As noticed earlier, there is no rule in Chapter XXXII which is akin to Rule 51(A) of Chapter XIV(A). It is vehemently contended by the learned senior counsel appearing for the 3rd respondent that in the absence of any specific rule to protect the right of a retrenched teacher, petitioner cannot seek shelter under Rule 51(A) which has no application at all as far as Higher Secondary School teachers are concerned.

8. Learned standing counsel submits that respondent No.1, the Director of Higher Secondary Education, is not vested with any authority to

issue a circular or order purporting to protect the right of a retrenched Higher Secondary School teacher. The above contention was raised by the learned standing counsel with specific reference to Exhibit P6 circular issued by respondent No.1 on which the petitioner has placed heavy reliance. In Exhibit P6, respondent No.1 had issued certain directions to the Managers of Aided Higher Secondary Schools with regard to the appointments to be made in the schools. One such direction or instruction was that the Manager should furnish a declaration as regards Rule 51(A) claimants in the school concerned. Learned counsel for the petitioner laying heavy emphasis on the above direction in Exhibit P6, contends that a secondary school teacher is also entitled to a preferential claim for appointment as envisaged under Rule 51(A). But I am afraid Ext.P6 circular will not come to the aid of the petitioner particularly for the reason that the said circular does not provide that Rule 51-A would be applicable in the case of Higher Secondary School Teachers, even assuming that the authority which issued the circular was vested with such power to issue such an order. In this context, it may be noticed that Exhibit P6 was issued on July 29,2004 long after Chapter XXXII was incorporated in the Kerala Education Rules.

9. In this context, learned counsel seeks the aid of Rule 1(h) of chapter XXXII also which reads thus.

> 1(h): "Unless the context otherwise requires, words and expressions used in this chapter, but not defined herein, shall have the meanings assigned to them in the Kerala Education Act, 1958 and in the foregoing chapters of these rules."

It is contended by the learned counsel that even in the absence of a rule similar to Rule 51(A) in Chapter XXXII, a higher Secondary school teacher will be eligible to get a preferential right in the matter of appointment by virtue of Rule 1(h). I am afraid the above contention is totally misconceived.

10. There is yet another aspect of the matter. If in fact the rule making authority wanted to give protection as envisaged in Rule 51-A to the Higher Secondary school teachers also, who had got the benefit of approved service for short term periods, nothing prevented the authority to incorporate such a rule. That not having been done, petitioner may not be in a position to contend for the position that she is entitled to get preference for appointment to the vacancies that arose in the school.

11. **In Pathanapuram Taluk Samajam Corporate Management Schools v. Sreelatha** (2006 (3) KLT 867) a Division Bench of this court

had occasion to consider the question whether Dependants of employees who died in harness while working in an aided school can claim the benefit of Rule 51-B of Chapter XIV-A K.E.R., in respect of a vacancy that arose in the Higher Secondary School Section. The Division Bench while answering the question in the negative, held that Rule 51-B being part of conditions of service of aided school teachers only and not in relation to the teachers in Higher Secondary Schools, such a claim could not be entertained against a vacancy that arose in the Higher Secondary Section. The Division Bench further held that the provisions contained in Chapter XIV-A K.E.R.. cannot as such be made applicable to the teachers in Higher Secondary Section.

In view of the above dictum laid down by a Division Bench of this court, I am afraid the petitioner is not entitled to succeed in this writ petition. Therefore, the writ petition fails. It is accordingly dismissed.

A.K.BASHEER, JUDGE

Rp